

The complaint

Mr G complains that Sainsbury's Bank Plc didn't uphold his claim under section 75 Consumer Credit Act 1974 ("CCA") in respect of a disappointing holiday.

What happened

Mr G booked an overseas holiday with a travel company ("the Supplier") for his family in autumn 2023. Mr G has said they encountered numerous problems. In summary he said:

- The transfer time far exceeded the 1 hour 30 minutes he had been led to believe.
- The room that they were allocated was unsuitable and unclean. The sliding balcony door handle was broken, the furniture was filthy, the bathroom was disgustingly unclean, the room smelt like damp/mould/mildew, the beds were not made etc.
- When they reported this to the hotel manager, she was rude, uncooperative, and unsympathetic.
- The hotel desk assistant eventually allocated them a new room a few days thereafter, however the location of this new room was at the far side of the hotel along a tree lined narrow track, meaning that it was too far away to walk to the beach, the restaurant or the pool; again limiting their activities and enjoyment on the holiday.
- The journey to get to the beach was not as it was advertised on the Supplier's website. It involved an approximately 1/2 mile walk down to some incredibly dangerous, steep tile/marble steps, across a busy main road, and down even more dangerous, obtuse angled steps.
- When on the beach, the Supplier's website did not make any mention of the fact that there would be charges to use the equipment/furniture that was there (i.e. the sun loungers), which meant they incurred additional unforeseen losses in having to pay a fee for their usage.
- The pool within the resort was not suitable to be used by any persons struggling with a disability, it was too difficult to get in/out of and therefore the use of the pool was restricted.
- There was no lift in the resort, despite the Supplier's website advertising that there was.
- The steps to climb up to the on-site restaurant were constantly soaking wet and therefore slippery, again making it difficult for somebody with mobility issues to manoeuvre.
- The upstairs bar was closed, meaning whenever they wanted to have a meal at lunchtime, they were forced to go downstairs to the only remaining open bar which was situated next to the soaking wet pool-side.

- They were offered no special assistance whatsoever, despite informing the Supplier at the time of booking that Mr G was disabled and struggled with mobility.
- The Supplier's website stated that there were various facilities included at the resort, an entertainment programme, a playground, 2 bars, a games room, concierge service, a tennis court etc., but none of these were available during their stay.

Mr G contacted the Supplier after five days and was asked to supply photos, but he declined and said he would pursue his complaint when he returned home. He submitted a claim to the Supplier a week after his return. It rejected his complaints but offered a goodwill gesture of a 10% refund.

Mr G rejected this and made a section 75 claim to Sainsbury's. It made enquiries of the Supplier which then increased its goodwill offer to 20%, but the bank failed to pass this on to Mr G. He didn't consider this was sufficient and brought a complaint to this service. Sainsbury's offered Mr G compensation of £100 for failing to let him know of the Supplier's increased offer. Our investigator concluded that the offer of a 20% refund was fair.

Mr G didn't agree and sent more photos and evidence in support of his claim.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have every sympathy with Mr G, but I don't consider I can uphold his complaint. I will explain why.

This complaint has been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

There is no dispute that the chain is intact and so I have to consider if there has been a breach of contract or misrepresentation.

It seems to me the major issue was the state of the room and I can see from the photos that it was in a relatively poor state. I have noted the marks, stains and mould etc. I agree that this amounts to a breach of contract. The Supplier is expected to ensure the accommodation is clean and in a decent state of repair. The consumer is also expected to endeavour to allow the Supplier to try and remedy the situation.

The hotel offered him another room which Mr G declined. I appreciate it was in a location which didn't suit him due to him having to walk with the aid of a walking stick. Having rejected that solution, he contacted the Supplier who apparently didn't have a representative on site. Mr G was asked for photographic evidence and decided that he would wait until his return. That is unfortunate as it would have allowed the Supplier the opportunity to rectify the situation so as to mitigate Mr G's disappointment. However, I agree some compensation is

due for the poor quality of the accommodation.

I have reviewed the Supplier's marketing material for the hotel and I can see it shows a photograph of the steps down to the beach so I cannot say that it failed to make Mr G aware that there were steps to get to the beach. I also note that some, or all, of those steps are not on the hotel property and so it cannot be held responsible for their safety. Nor is the beach owned by the hotel and it cannot be held responsible for any issue Mr G raised about it.

I cannot see that the Supplier indicated that the pool would have access for those with walking difficulties. I appreciate Mr G let it know about his health when arranging the holiday so that arrangements could be made to assist him when travelling. I don't think this makes the Supplier responsible for checking every aspect of the hotel to ensure it was suitable for Mr G. The Supplier recommends that customers satisfy themselves that the accommodation is suitable for their needs.

I can see that some of the facilities Mr G was expecting were not available. I have also noted that the holiday was taken in the off season and the Supplier's website informs customers that the facilities are subject to seasonal availability. I can see this was disappointing, but I cannot say that there was either a breach of contract or a misrepresentation.

It is not disputed that there was no lift in the hotel and the Supplier's website and written material says there is. This is clearly a matter of misrepresentation and something to be taken into account when considering compensation.

I also note that some outside steps were wet since they were close to the pool. I don't consider it unreasonable to expect areas near the pool to get wet and to be somewhat slippery. I recognise this was more of an issue for Mr G, but I cannot say that this is something I can hold the bank responsible for.

I see that Mr G asked for special assistance which consisted of speedy check in and fast track security to avoid standing for too long. Also a room close to the main hotel facilities and a mini fridge to store temperature controlled medication. He told the Supplier he used a walking stick. Mr G has told this service that he received suitable support when departing the UK, but he got none on arrival at the destination airport. The Supplier has said that it passes on special assistance requests to the airports concerned and it has no control over what they provide. It says this is explained on its website.

I can understand Mr G's annoyance when arriving in the early hours of the morning that he did not receive the assistance he was expecting. That is regrettable, but it is not something that I can hold the Supplier or the bank responsible for.

Finally the transfer time shown on the documents sent to Mr G states that it will take 1 hour 30 minutes, but this is a rough guide. Again I can understand Mr G's frustration at arriving so late and in the early hours of the morning, but I cannot say that there has been either a breach of contract or misrepresentation.

Overall I understand that Mr G was disappointed with the holiday. He has explained the special nature of the holiday and his family's circumstances. I can sympathise with him. I have to consider what compensation is fair and reasonable taking into account the facts. Mr G and his family had use of the flights, the transfers and the hotel accommodation. The latter may not have been up to standard in parts and I also have to take into account that the Supplier did not have the opportunity to rectify the issues.

Overall, I consider the 20% reduction offered by the Supplier is fair and reasonable which I expect the Supplier to honour. I appreciate Mr G was seeking a full refund, but I do not

consider that is appropriate.

I also consider the £100 offered by Sainsbury's for failing to let Mr G know about the increased offer is fair.

My final decision

Sainsbury's Bank Plc has already made an offer to pay £100 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Sainsbury's Bank Plc should pay £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 December 2024.

Ivor Graham
Ombudsman